

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FEDERAL HOME LOAN
MORTGAGE CORPORATION,

Plaintiff,

Case No. 1:08-cv-864

HON. JANET T. NEFF

v

KIMBERLY KAY LEER, et al.,

Defendants.

OPINION

This matter is before the Court on defendant Michael Modena's Objection (Dkt 13) to the March 30, 2009 Report and Recommendation (Dkt 11) of the magistrate judge, recommending that this Court grant plaintiff Federal Home Loan Mortgage Corporation's Amended Motion to Remand this case to the 60th District Court, the state court in which it was originally filed. Plaintiff has also filed two supplements to his Objection (Dkts 14, 15).

In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court denies the objection and issues this Opinion and Order to Remand.

The March 30, 2009 Report and Recommendation concluded that Modena's removal of this case to federal district court was improper under 28 U.S.C. § 1441, and furthermore, that by removing this action, Modena improperly seeks to have this Court review the state court's decision granting judgment in plaintiff's favor, contrary to the *Rooker-Feldman* doctrine. *See Tropf v.*

Fidelity Nat'l Title Ins. Co., 289 F.3d 929, 937 (6th Cir. 2002). In his Objection and supplements, Modena lodges no specific objection to the Report and Recommendation, but instead reasserts his various claims challenging the underlying state court judgment. The Court finds no cognizable grounds for relief in either the Objection or the supplementary filings by Modena.

The magistrate correctly determined that remand of this case is appropriate since it “appears that Modena has removed this matter to this Court for the purpose of obtaining a reversal of the state court decision in favor of Plaintiff,” and “this Court lacks the authority to hear such matters” (R & R 3).¹ Accordingly, Modena’s Objection to the March 30, 2009 Report and Recommendation is denied.

Because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

An Order will be entered consistent with this Opinion.

Dated: June 17, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

¹ The Report and Recommendation also concludes that remand is proper on the alternative ground that Modena’s removal was improper under 29 U.S.C. § 1441. Although plaintiff asserts that this Court lacks jurisdiction to hear this matter, plaintiff provides no supporting argument or authority to support this contention in light of the original jurisdiction granted under 12 U.S.C. § 1452(f) (Pl. Am. Mot. Br. 3). Because this Court concludes that remand is proper on the basis of the *Rooker-Feldman* doctrine, the Court does not rely on or adopt the reasoning of the Report and Recommendation with respect to the propriety of removal under 29 U.S.C. § 1441 or the conclusion that “the present action is not a matter over which ‘the district courts have original jurisdiction’” (R & R 2).

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ORDER TO REMAND

In accordance with the Opinion entered this date:

IT IS HEREBY ORDERED that the Objection (Dkt 13) is DENIED and the Report and Recommendation (Dkt 11) is APPROVED and ADOPTED in relevant part as the opinion of the Court.

IT IS FURTHER ORDERED that the Defendant's Amended Motion to Remand (Dkt 10) is GRANTED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Order to Remand would not be taken in good faith.

IT IS FURTHER ORDERED that this Order resolves all pending claims in this case, and therefore, the action is TERMINATED.

Date: June 17, 2009

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge